

ASSEMBLY BILL

No. 1349

Introduced by Assembly Member Hill

February 18, 2011

An act to amend Sections 7573 and 7612 of the Family Code, relating to paternity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1349, as introduced, Hill. Paternity: conflicting presumptions.

Under existing law, with certain exceptions, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law further provides that a man is rebuttably presumed to be the father if he was married to, or attempted to marry, the mother before or after the birth of the child, or he receives the child as his own and openly holds the child out as his own. Under existing law, the voluntary declaration of paternity may be set aside by the court if genetic evidence establishes the man is not the father of the child, while the latter presumptions are rebutted by a judgment establishing paternity by another man. Existing law provides that if 2 or more presumptions conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

This bill would authorize a person who is rebuttably presumed to be the child's parent under the above-described provisions to bring a motion to set aside a voluntary declaration of paternity, and would require the court to consider specified factors, including the nature, duration, and quality of the petitioning party's relationship with the child in deciding

whether to set aside the voluntary declaration of paternity. The bill would include these proceedings among the exceptions to the provision that a voluntary declaration of paternity has the force and effect of a judgment of paternity. The bill would provide that, in the event of a conflict between a rebuttable presumption of paternity and the voluntary declaration of paternity, the weightier considerations of policy and logic control.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7573 of the Family Code is amended to
2 read:

3 7573. Except as provided in Sections 7575, 7576, ~~and~~ 7577,
4 *and* 7612, a completed voluntary declaration of paternity, as
5 described in Section 7574, that has been filed with the Department
6 of Child Support Services shall establish the paternity of a child
7 and shall have the same force and effect as a judgment for paternity
8 issued by a court of competent jurisdiction. The voluntary
9 declaration of paternity shall be recognized as a basis for the
10 establishment of an order for child custody, visitation, or child
11 support.

12 SEC. 2. Section 7612 of the Family Code is amended to read:

13 7612. (a) Except as provided in Chapter 1 (commencing with
14 Section 7540) and Chapter 3 (commencing with Section 7570) of
15 Part 2 or in Section 20102, a presumption under Section 7611 is
16 a rebuttable presumption affecting the burden of proof and may
17 be rebutted in an appropriate action only by clear and convincing
18 evidence.

19 (b) If two or more presumptions arise under Section 7610 or
20 7611 that conflict with each other, or if a presumption under
21 Section 7611 conflicts with a claim pursuant to Section 7610, the
22 presumption which on the facts is founded on the weightier
23 considerations of policy and logic controls.

24 (c) The presumption under Section 7611 is rebutted by a
25 judgment establishing paternity of the child by another man.

26 (d) *Within two years of the execution of a voluntary declaration*
27 *of paternity, a person who is presumed to be a parent under Section*
28 *7611 may file a petition to set aside a voluntary declaration of*

1 *paternity. The court's ruling on the petition to set aside the*
2 *voluntary declaration of paternity shall be made taking into*
3 *account the validity of the voluntary declaration of paternity, and*
4 *the best interests of the child based upon the court's consideration*
5 *of the factors set forth in subdivision (b) of Section 7575, as well*
6 *as the nature, duration, and quality of the petitioning party's*
7 *relationship with the child and the benefit or detriment to the child*
8 *of continuing that relationship. In the event of any conflict between*
9 *the presumption under Section 7611 and the voluntary declaration*
10 *of paternity, the weightier considerations of policy and logic shall*
11 *control.*

O